

Gina L. Albertson (SBN 216960)  
ALBERTSON LAW  
2603 Main Street, Suite 860  
Irvine, California 92614  
Telephone: (949) 577-9464  
Fax: (949) 577-9460  
galbertson@albertsonlaw.org

Attorneys for Plaintiff,  
Deutsche Bank National Trust Company, as Trustee, in Trust for Registered  
Holders of WaMu Asset-Backed Certificates WaMu Series 2007-HE1 Trust

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA—EASTERN DIVISION**

DEUTSCHE BANK NATIONAL  
TRUST COMPANY, AS TRUSTEE,  
IN TRUST FOR REGISTERED  
HOLDERS OF WAMU ASSET-  
BACKED CERTIFICATES WAMU  
SERIES 2007-HE1 TRUST,

Plaintiff,

vs.

COMMONWEALTH LAND TITLE  
INSURANCE COMPANY; BUREAU  
OF INDIAN AFFAIRS; DORA  
SALGADO, an individual; ALANA  
MAE SEGUNDO, an individual;  
BELINDA SUE SHORT, an  
individual; MONICA LUTTERS, an  
individual; MARIA MENDEZ, an  
individual; LIZA PETE RODRIGUEZ,  
an individual; and DOES 1-50,  
inclusive.

Defendants.

**Case No.**

**COMPLAINT FOR**

1. DECLARATORY JUDGMENT  
REGARDING VALIDITY AND  
ENFORCEABILITY OF DEED  
OF TRUST
2. BREACH OF LEASE  
AGREEMENT
3. CONSTRUCTIVE TRUST
4. DECLARATORY JUDGMENT  
REGARDING LEASE  
AGREEMENT
5. DECLARATORY JUDGMENT  
REGARDING 25 CFR § 165.366
6. BREACH OF INSURANCE  
CONTRACT
7. DECLARATORY JUDGMENT  
REGARDING INSURANCE  
CONTRACT

**JURY TRIAL DEMANDED**

Plaintiff, Deutsche Bank National Trust Company, as Trustee, in Trust for  
Registered Holders of WaMu Asset-Backed Certificates WaMu Series 2007-HE1  
Trust (“Deutsche Bank” or “Plaintiff”) hereby alleges as follows and demands a  
jury trial:

1 **I. PARTIES**

2 1. Plaintiff Deutsche Bank National Trust Company is a national  
3 banking association, organized and existing under the laws of the United States and  
4 is the Trustee for the Registered Holders of WaMu Asset-Backed Certificates  
5 WaMu Series 2007-HE1 Trust, and was, at all times relevant to this action.

6 2. Plaintiff is informed and believes, and thereon alleges that Defendant  
7 Commonwealth Land Title Insurance Company (“Commonwealth”) is a title  
8 insurance company operating in California. Commonwealth insures title to real  
9 property in California and prosecutes and defends lawsuits in California.

10 3. Plaintiff is informed and believes, and thereon alleges that the Bureau  
11 of Indian Affairs (“BIA”) is a department of the United States Department of the  
12 Interior, which is an executive department of the United States of America.

13 4. Plaintiff is informed and believes, and thereon alleges that Dora  
14 Salgado is an individual residing in the County of Riverside, State of California.

15 5. Plaintiff is informed and believes, and thereon alleges that Alana Mae  
16 Segundo is an individual residing in the County of Riverside, State of California.

17 6. Plaintiff is informed and believes, and thereon alleges that Belinda  
18 Sue Short is an individual residing in the County of Riverside, State of California.

19 7. Plaintiff is informed and believes, and thereon alleges that Liza Pete  
20 Rodriguez is an individual residing in the County of Riverside, State of California.

21 8. Plaintiff is informed and believes, and thereon alleges that Monica  
22 Lutters is an individual residing in the County of Riverside, State of California.

23 9. Plaintiff is informed and believes, and thereon alleges that Maria  
24 Mendez is an individual residing in the County of Riverside, State of California.

25 10. Defendants Dora Salgado, Alana Mae Segundo, Belinda Sue Short,  
26 Liza Pete Rodriguez, Monica Lutters, and Maria Mendez will be collectively  
27 referred to herein as “Lessors.”

28 11. The true names and capacities, whether individual, corporate,

1 associate or otherwise, of Defendants DOES 1 through 50, inclusive, are unknown  
2 to Plaintiff. Plaintiff therefore sues these Defendants by their fictitious names.  
3 Plaintiff is informed and believes, and based upon this information and belief  
4 alleges, that each of the Defendants designated herein as a fictitiously named  
5 Defendant is either contractually or tortuously responsible for the events and  
6 happenings herein referred to, and caused the damage to Plaintiff as herein alleged.  
7 When Plaintiff ascertains the true names and capacities of Defendants DOES 1  
8 through 50, inclusive, it will ask leave of this Court to amend its Complaint by  
9 setting forth the same.

10 12. Plaintiff is informed and believes, and based upon this information  
11 and belief alleges, that at all times mentioned herein, Defendants, and each of  
12 them, were and are now, the agents, servants, and/or employees of their Co-  
13 Defendants, and in doing or omitting to do the acts and things herein complained  
14 of, were acting within the course and scope of said agency, service and/or  
15 employment, and/or that all of said acts and/or omissions were authorized and/or  
16 ratified by said co-Defendants, and/or were done with their knowledge and/or  
17 consent. Plaintiff will amend this complaint to show each such relationship to  
18 conform to proof, or upon order of this Court.

## 19 **II. JURISDICTION**

20 13. Jurisdiction is proper in the United States District Court for the  
21 Central District of California under 28 U.S.C. § 1331 because the case concerns  
22 questions of federal law with respect to the applicability of 25 CFR §§ 162.349–  
23 162.352 (2016) and 25 CFR §§ 162.353–162.356 (2016) and 25 CFR § 162.366  
24 (2016), among other statutes.

25 14. Jurisdiction is also proper under 28 U.S.C. § 1346 because this action  
26 is a civil action against the United States, upon a contract, not sounding in tort.

27 15. Jurisdiction is also proper under 5 U.S.C. § 702 because Plaintiff has  
28 been aggrieved by an agency action or failure to act, seeks relief other than

monetary relief, and the United States is a Defendant and an indispensable party.

16. Venue is proper in the United States District Court for the Central District of California, Eastern Division, because the County of Riverside is within the jurisdiction of Central District of California's Eastern Division and the real property at issue in this matter is located in Riverside County. Lessors, or a majority of them, reside in the County of Riverside. The BIA Palm Springs Field Office, which manages the real property at issue, is located in the County of Riverside. The majority of the witnesses and evidence are located within the County of Riverside. The County of Riverside is the intended place of performance of the Lease Agreement concerning the real property at issue. Additionally, Defendant Commonwealth does business in Riverside County; Defendant Commonwealth issued an insurance policy to insure against risks in Riverside County and therefore Riverside County is the place of intended performance; and the underlying acts giving rise to coverage occurred in Riverside County.

### **III. ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

#### **1. The Subject Property**

17. The real property that is the subject of this action is located at 627 Violeta Dr., Palm Springs, California 92262 (the "Subject Property"), and is legally described as:

All that certain real property situated in the County of Riverside, State of California, described as follows:

A subleasehold as created by that certain sublease dated June 3, 1981, executed by Alejo Amado Associates, California Joint Venture, composed of Albert S. Geh, an individual, the Lebo Company, a General Partnership and Harbor Bluff's Development, a General Partnership, as lessor, and Ivy K. Ong and Karen Sue Ong, husband and wife as joint tenants, as lessee, and recorded on June 15, 1981 as Instrument No. 81-110352, Official Records, subject to the terms, conditions and provisions as contained therein.

A CONDOMINIUM COMPRISED OF:

Parcel 1:

1 A separate interest in and to Unit No. 17, as composed, described  
2 and shown on Condominium Plan record in Book C31, Pages 21  
3 through 31, both inclusive, of Official Records, Riverside County  
4 Records.

5 Parcel 2:

6 An undivided one sixty-fourth (1/64th) interest as tenants in  
7 common in and to the improvements to the real property situated  
8 within Lot 1 of Tract 13688, in the City of Palm Springs, as said  
9 Tract is depicted and shown on a Map thereof recorded in Book  
10 111, Pages 77 and 78 both inclusive, of Official Records, Riverside  
11 County Records; and Amended by Certificate of Correction  
12 recorded December 27, 1982 as Instrument No. 223134, Official  
13 Records said improvements include but are not limited to the  
14 structural buildings containing the Condominium Units and the  
15 Recreational Facilities;

16 Excepting therefrom, Units 1 through 64, both inclusive as  
17 composed, described and shown on said Condominium Plan;

18 Parcel 3:

19 An undivided one sixty-fourth (1/64th) Leasehold interest as a  
20 tenants in common and to the Master Lease, as defined herein, for  
21 the term thereof; in and to Lot 1 of said Tract No. 13688;

22 Excepting therefrom, Units 1 through 64, both inclusive, as  
23 composed, described and shown on the Condominium Plan  
24 referred to in Parcel 1, above; Also Excepting therefrom, the  
25 improvements referred to in Parcel 2, above.

26 18. The Subject Property is a subleasehold estate for years situated on  
27 Indian Trust Land that was originally conveyed under a Condominium  
28 Conveyance and Lease Assignment signed on June 3, 1981 and recorded in the  
Official Records of the Riverside County Recorder's Office as Instrument Number  
81-110352 (the "Lease Agreement").

19 19. The Lease Agreement expressly defines "Ground or Master Lease" as  
20 "[t]hat certain United States Department of the Interior, Bureau of Indian Affairs,  
21 business lease No. PSL-246, Contract No. J53C1420-3561, dated June 2, 1978,  
22 executed by Gwendoly (sic) Saubel, allottee under allotment No. 25, as to Block  
23 91; Alana Mae Segundo, allottee under allotment No. 64 as to Block 92; Belinda  
24 Sue Short, allottee under allotment No. 65, as to Block 93; and Lois Marie Pete,  
25 allottee under allotment No. 79, as to Block 94; as Lessors. A memorandum of

1 the assignment of the lessee's interest to Alejo-Amado Associates was recorded  
2 July 16, 1979, in Book 1979, Page 147821, Official Records of Riverside County,  
3 California."

4 20. The Lease Agreement expressly defines "Lessor" as "[t]he lessors  
5 referred to in the ground or master lease above, or their respective successors and  
6 assigns."

7 21. Plaintiff is informed and believes and thereon alleges that Dora  
8 Salgado succeeded Gwendolyn Saubel in interest, and is now the allottee under  
9 allotment 25, and is therefore a Lessor under the terms of the Lease Agreement.

10 22. Plaintiff is informed and believes and thereon alleges that Liza Pete  
11 Rodriguez, Monica Lutters, and Maria Mendez succeeded Lois Marie Pete in  
12 interest, and are now the allottees under allotment 79, and are therefore Lessors  
13 under the terms of the Lease Agreement.

14 23. Under the Lease Agreement, the BIA is tasked with collecting any  
15 rent due under the Lease Agreement and enforcing the provisions of the Lease  
16 Agreement. Specifically, section 5 of the Lease Agreement states, in part:

17 All rents due and payable hereunder shall be paid to the Bureau of  
18 Indian Affairs at its offices or at such other depository as may be  
19 designated in writing from time to time by the authorized delegate  
of the Secretary of the Interior.

20 24. The Lease Agreement provides that either the Lessors or the Secretary  
21 may enforce the provisions of the Lease Agreement.

22 25. The Lease Agreement expressly defines "Secretary" as "[t]he  
23 Secretary of the Interior of the United States of America, or his duly authorized  
24 delegate or representative."

25 26. Plaintiff is informed and believes and based upon this information and  
26 belief alleges, that the BIA is tasked with enforcing the Lease Agreement as a duly  
27 authorized delegate or representative of the Secretary of the Interior of the United  
28 States of America. Plaintiff alleges that the BIA is charged with fulfilling the trust



obligations of the United States to Native Americans and that the general purpose of the BIA regulations in the area of leasing Indian land is to further fulfill the Secretary's fiduciary responsibility to federally-recognized tribes and Indian individuals.

27. The Lease Agreement itself also demonstrates that the BIA, acting on behalf of the Secretary, also acts as a co-lessor, to whom the obligations of the Lease Agreement are owed. Specifically, section 26 of the Lease Agreement expressly states:

While the leased premises are held in trust by the United States or subject to a restriction against alienation imposed by the United States, all of the Lessee's obligations under this lease and the obligations of Lessee's sureties, if any, are to the United States as well as to the owner of the land.

## **B. The Purchase and Loan Transaction**

### **1. Bowhay Purchased the Subject Property**

28. On or about April 22, 2005, Carolyn Bowhay ("Bowhay") purchased the Subject Property. The assignment to Bowhay was recorded in the Official Records of the Riverside County Recorder's Office as Instrument Number 2005-0399568 on May 19, 2005.

29. The assignment to Bowhay was recorded with a "Consent to Assignment" signed by the BIA.

30. The consent to assignment states:

This will constitute Consent to all Assignments of Subleases which Consent is required by Article 16 of PSL-246 said Consent to Assignment form having been approved this day by Director, Palm Springs Field Office, Bureau of Indian Affairs.

This consent is granted with the understanding that the Assignor and Assignee shall comply with the terms and conditions of the Sublease.

### **2. Bowhay Granted Whalen an Interest in the Subject Property**

31. On or about October 10, 2016, Bowhay executed an Interspousal Transfer Deed and Grant Deed, conveying fifty percent of her interest in the

1 Subject Property to Robert Whalen (“Whalen”) “a married man as his sole and  
2 separate property, as to an undivided 50% interest, as tenants in common.”

3 32. The Interspousal Transfer Deed was recorded in the Official Records  
4 of the Riverside County Recorder’s Office as Instrument Number 2006-0859788  
5 on November 11, 2006.

6 33. The Grant Deed was recorded in the Official Records of the Riverside  
7 County Recorder’s Office as Instrument Number 2006-0859789 on November 21,  
8 2006.

9 34. Neither the Interspousal Transfer Deed nor the Grant Deed to Whalen  
10 was recorded with any additional “Consent to Assignment” signed by the BIA.

11 **3. Bowhay and Whalen Executed the Subject Deed of Trust**

12 35. On or about November 15, 2006, Bowhay and Whalen obtained a loan  
13 in the principal amount of \$329,000.00 in which they executed a note (the “Subject  
14 Note”).

15 36. The Subject Note is secured by a first position deed of trust  
16 encumbering the Subject Property (the “Subject Deed of Trust” and together with  
17 the Subject Note, the “Subject Loan”). The Subject Deed of Trust was recorded in  
18 the Official Records of the Riverside County Recorder’s Office as Instrument  
19 Number 2006-0859790 on November 21, 2006.

20 37. The Subject Deed of Trust identifies Washington Mutual Bank  
21 (“WAMU”) as the lender.

22 38. The Subject Deed of Trust was not recorded with any additional  
23 “Consent to Assignment” signed by the BIA.

24 **a) The Subject Deed of Trust is Authorized Because**  
25 **Prior Consent Explicitly Authorizes All Assignments**

26 39. Plaintiff is informed and believes, and thereon alleges, that the Subject  
27 Deed of Trust is authorized by the BIA. No additional “Consent to Assignment”  
28 was necessary because the Consent to Assignment attached to Bowhay’s



1 Assignment “constitute[s] Consent to all Assignments of Subleases which Consent  
2 is required by Article 16 of PSL-246.” The language of the consent expressly  
3 authorized future, current, and past assignments and encumbrances.

4 **b) The Subject Deed of Trust is Valid Under California**  
5 **Law**

6 40. Plaintiff is informed and believes, and thereon alleges, that the Subject  
7 Deed of Trust is valid, fully enforceable and no provision of the Lease Agreement  
8 could invalidate the Subject Deed of Trust. Under California Law, a deed of trust  
9 validly imposes a lien on the leasehold estate even if the lease purports to limit the  
10 lessee’s right to assign or encumber the lease. *Chapman v. Great Western Gypsum*  
11 *Co.*, 216 Cal. 420, 426–427 (1932).

12 **c) The Subject Deed of Trust is Valid under Federal**  
13 **Regulations**

14 41. Plaintiff is informed and believes, and thereon alleges, that the Subject  
15 Deed of Trust is neither void nor voidable, and is therefore valid. *San Xavier Dev.*  
16 *Auth. v. Charles*, 237 F.3d 1149, 1153 (9th Cir. 2001) (interpreting 25 CFR  
17 § 162.12(a), the predecessor to current 25 CFR § 162.357(a) and prior 25 CFR  
18 § 162.610(a)).

19 42. If further BIA approval was required for the Subject Deed of Trust,  
20 Plaintiff alleges that the Subject Deed of Trust is neither void or nor voidable, and  
21 neither does the cancellation of the Leasehold make this so. Instead the remedy for  
22 a violation of § 162.12(a) is found in 25 CFR § 162.14, which” provides for  
23 written notice and opportunity to cure.

24 43. 25 CFR § 162.12(a) was superseded by 25 CFR § 162.610(a) and  
25 again by 25 CFR § 162.357(a). Neither of the superseding regulations declares that  
26 a sublease, assignment, or encumbrance that does not receive BIA approval is void  
27 or voidable. *Compare* 25 CFR § 162.12(a) *with* 25 CFR § 162.610(a) *and* 25 CFR  
28 § 162.357(a). Instead, the regulations continue to provide for notice and

1 opportunity to cure in the event of an unapproved sublease, assignment, or  
2 encumbrance. *See* 25 CFR § 162.366.

3 44. Therefore, Plaintiff alleges that because the Subject Deed of Trust was  
4 neither void nor voidable, it is valid and fully enforceable in all respects regardless  
5 of the improper Leasehold cancellation.

6 **d) The Subject Deed of Trust is Enforceable Against Any**  
7 **After Acquired Interests Under California Law**

8 45. Plaintiff is informed and believes, and thereon alleges, that the Subject  
9 Deed of Trust is also enforceable against any after acquired interest in the Subject  
10 Property pursuant to Cal. Civ. Code § 2897.

11 46. Pursuant to Cal. Civ. Code § 1214, a subsequently created lien only  
12 takes priority over an earlier created lien if (1) the earlier lien was not recorded; (2)  
13 the later lien holder was without notice of the earlier lien; (3) the later lien holder  
14 gave value for the lien; and (4) the later lien was recorded first. However, a party  
15 with actual knowledge of a prior lien cannot claim priority over it even if the lien  
16 was not recorded. Cal. Civ. Code § 1217.

17 47. Plaintiff alleges that because the Subject Deed of Trust was recorded,  
18 it is valid and enforceable against all after acquired interests under California law.

19 **4. Deutsche Bank is the Beneficiary of the Subject Deed of**  
20 **Trust**

21 48. The Subject Loan, including the Subject Note, the Subject Deed of  
22 Trust, and all of its accompanying rights and documentation, was sold, assigned,  
23 and conveyed by WAMU, and by virtue of the Pooling and Servicing Agreement  
24 dated January 1, 2007, assigned to Deutsche Bank National Trust Company, as  
25 Trustee for the Registered Holders of the WaMu Asset-Backed Certificates WaMu  
26 Series 2007-HE1 Trust.

27 49. On or about April 9, 2012, JP Morgan Chase Bank, National  
28 Association successor in interest of certain rights by purchase from the FDIC as

1 receiver of Washington Mutual Bank prepared a Corporate Assignment of Deed of  
2 Trust evidencing and to provide record notice to third parties of the assignment of  
3 the Subject Loan, including the Subject Deed of Trust, to Deutsche Bank. The  
4 Corporate Assignment of Deed of Trust was recorded in the Riverside County  
5 Recorder's Office as Instrument Number 2006-0859790 on May 7, 2012.

6 **C. Commonwealth Insured the Subject Deed of Trust**

7 50. On or about November 17, 2006, Commonwealth issued a title  
8 insurance policy that insures, Deutsche Bank, the owner of the Subject Loan,  
9 policy number 03726379 (the "Policy").

10 51. The Policy was issued to insure the title to the Subject Property and  
11 the validity of Subject Deed of Trust. Specifically, the Policy insures against  
12 "[t]itle to the estate or Interest described in Schedule A being vested other than as  
13 stated herein;" "[u]nmarketability of the tile;" "[a]ny defect in or lien or  
14 encumbrance on the title;" "[t]he invalidity or unenforceability of the lien of the  
15 insured mortgage upon the title;" and "[t]he invalidity or unenforceability of any  
16 assignment of the insured mortgage...."

17 52. The Subject Deed of Trust is the "insured mortgage" defined in the  
18 Policy's Schedule A, and more particularly described in Policy's Exhibit A. The  
19 Policy's Exhibit A defines the "insured mortgage" as "A deed of trust to secure an  
20 indebtedness in the amount shown below, and any other obligations secured  
21 thereby... Recorded: November 17, 2006 as Instrument No. 2006-859790, Official  
22 Records."

23 53. Deutsche Bank is an "insured" within the meaning of the Policy.  
24 Under Section 1, titled "Definition of Terms" subsection (a)(i), the Policy defines  
25 "insured" to mean "the owner of the indebtedness secured by the insured mortgage  
26 and each successor in ownership of the indebtedness...."

27 54. As the owner of the Subject Loan, including assignee of the Subject  
28 Deed of Trust, Deutsche Bank is a "successor in ownership of the indebtedness" as

1 defined in the Policy and is therefore entitled to recover any rights, obligations, or  
2 payments due under the Policy.

3 **D. The BIA Decided to Terminate the Lease for the Subject Property**

4 55. On or about January 7, 2016, the BIA sent a letter to Bowhay  
5 providing notice of its decision to terminate the Lease Agreement for the Subject  
6 Property.

7 56. The BIA's January 7, 2016 letter asserted that the Subject Deed of  
8 Trust, the Grant Deed to Whalen, and Corporate Assignment of Deed of Trust to  
9 Deutsche Bank were not approved by the BIA. (*See* Ex. H).

10 57. Upon receipt of the BIA's January 7, 2016 letter indirectly not from  
11 the BIA, it was sufficiently received and understood that the Leasehold was being  
12 cancelled and that the BIA contended that the Subject Deed of Trust, Grant Deed  
13 to Whalen, and Corporate Assignment of Deed of Trust lacked BIA approval.

14 58. Within the thirty day notice of appeal period, on or about February 5,  
15 2016, Deutsche Bank appealed the decision to terminate the Lease Agreement for  
16 the Subject Property by letter to the BIA at the address specified in the BIA's  
17 January 7, 2016 letter.

18 59. The BIA refused to acknowledge Deutsche Bank's standing to appeal  
19 its decision to terminate the Lease Agreement and directed Deutsche Bank to  
20 negotiate with Lessors, through their attorney. Likewise, the BIA refused to  
21 provide Deutsche Bank with an administrative hearing and all procedural due  
22 process required by the Administrative Procedures Act.

23 60. The Indian landowners claimed that the leasehold estate was cancelled  
24 and that the leasehold cancellation would not be rescinded. However, according to  
25 the BIA, despite the BIA's January 7, 2016 letter, the cancellation did not become  
26 immediately effective. Rather, the BIA held the cancellation because it received  
27 Deutsche Bank's appeal.

**1. Lessors and the BIA Violated the Lease Agreement, which Provides for Notice and Opportunity to Cure**

61. The Lease Agreement gives all encumbrancers forty-five days' notice of any intention to terminate the Lease Agreement. Specifically, section 18 of the Lease Agreement states, in part:

At least forty-five (45) days prior to termination of this lease or default by Lessee, Lessor or the Secretary shall give notice in writing to the encumbrancer expressing Lessor's intention to terminate and describing said default or breach.

62. The Lease Agreement also gives an encumbrancer forty-five days' notice and opportunity to cure any default that can be cured by payment or expenditure of money. Specifically, section 18 of the Lease Agreement states, in part:

When the default or breach can be cured by the payment or expenditure of money, this lease will not be terminated if within forty-five (45) days after receipt of such written notice to terminate, encumbrancer shall cure the default or breach. Whenever the encumbrancer exercises any right on a default situation, the encumbrancer shall be bound to comply with all of the obligations and conditions of the lease....

63. Section 18 also provides for forty-five days' notice and opportunity to initiate foreclosure where a default of the Lease Agreement cannot be cured by payment or expenditure of money, and provides that during the foreclosure process the Lease Agreement will not be terminated. Specifically, section 18 of the Lease Agreement states, in part:

When the default or breach cannot be cured by the payment or expenditure of money, this lease will not be terminated if the encumbrancer shall, within the forty five (45) day period initiate, and thereafter diligently pursue to completion, proceedings for foreclosure and sale under the pursuant to the terms of the encumbrance. However, during and until the completion of such foreclosure proceedings, the encumbrancer shall pay the rents due and payable by the Lessee under this lease; shall maintain all insurance as required by the lease; shall pay all taxes due and unpaid on the taxable property covered by the lease; shall maintain all insurance as required by the lease; shall pay all taxes due and

1           unpaid on the taxable property covered by the lease [sic]; shall  
2           begin the cure of any other default or breach not curable by  
3           payment or expenditure or [sic] money, which can be reasonably  
4           undertaken by the encumbrancer, and all [sic] diligently prosecute  
5           the said cure of such default or breach until the leasehold is either  
6           sold upon foreclosure pursuant to the terms of the encumbrance, or  
7           released or reconveyed thereafter.

8           64. The Lease Agreement also expressly defines “Approved  
9           Encumbrance” as “[a]n encumbrance upon the real property conveyed and  
10          assigned herein approved by the Secretary.”

11          65. The Lease Agreement distinguishes between an “approved  
12          encumbrance” and an unapproved encumbrance, as demonstrated by the specific  
13          use of the term “approved encumbrance” in section 17 of the Lease Agreement to  
14          mean an encumbrance that was approved by the Secretary. (Lease § 17, p. 13  
15          compared *with* § 18, pp. 14–15).

16          66. Although the Lease Agreement distinguishes between encumbrancers  
17          with approved encumbrances and encumbrancers with unapproved encumbrances,  
18          section 18 of the Lease Agreement provides for notice and opportunity to cure or  
19          foreclose to *all* encumbrancers regardless of whether the encumbrance is approved  
20          or unapproved. This is demonstrated by express omission of any distinction  
21          between encumbrancers of approved and unapproved encumbrances in section 18  
22          of the Lease Agreement. Such lack of distinction furthers Lessors’ interest of  
23          ensuring payment under, and compliance with, the Lease Agreement. (Lease § 18,  
24          pp. 14–15). Such lack of distinction maximizes the number of parties available to  
25          cure a lessee’s default.

26          67. Plaintiff alleges that as owner of the Subject Loan and assignee of the  
27          Subject Deed of Trust, Deutsche Bank is an encumbrancer of the Subject Property,  
28          and therefore, a third-party beneficiary of the Lease Agreement.

            68. Specifically, section 18 of the Lease Agreement, was written  
            expressly to protect the interests and rights of encumbrancers like Deutsche Bank



1 in return for furthering Lessors' interest of ensuring payment under and  
2 compliance with the Lease Agreement.

3 69. Plaintiff alleges that although section 18 of the Lease Agreement  
4 provides for notice and opportunity to cure or foreclose by the Secretary or the  
5 Lessors' prior to termination of the Lease Agreement, the Secretary first gave  
6 notice to WAMU, which was no longer a viable entity, although the Corporate  
7 Assignment of Deed of Trust was recorded, and later it appears to have been sent  
8 to an address other than the address listed for the servicer on the Corporate  
9 Assignment of Deed of Trust as the address identified to contact for matters  
10 involving the Subject Loan. Thus, Plaintiff alleges that the attempted notice by the  
11 Secretary was insufficient in all respects to cancel the Lease as against Deutsche  
12 Bank and to have any effect on Deutsche Bank's lien. Plaintiff further alleges that  
13 the Secretary and Lessors' failed to comply with the terms to cancel the Lease and  
14 thus as to Deutsche Bank the Lease is fully enforceable as it relates to its rights as  
15 an encumbrancer of the Subject Property. Plaintiff also alleges that Lessors gave  
16 no notice of any default to Deutsche Bank separate from the Secretary's efforts.  
17 Nor did the Secretary or Lessors give Deutsche Bank an opportunity to cure or  
18 foreclose. Therefore, Plaintiff alleges that the cancellation of the Lease is null and  
19 void as to Deutsche Bank and that the Subject Deed of Trust is valid, senior, and  
20 fully enforceable as to all other interests and suffered no prejudice as a result of the  
21 cancellation of the Lease to the borrowers .

22 **2. 25 CFR Section 162.366 Also Provides for Notice and**  
23 **Opportunity to Cure**

24 70. Pursuant to 25 CFR § 162.366, in the event of a breach of the Lease  
25 Agreement, the BIA is required to give notice to "the lessee and any mortgagee a  
26 notice of violation by certified mail, return receipt requested" as well as an  
27 opportunity to cure. Specifically, 25 CFR § 162.366 states:

28 (a) In the absence of actions or proceedings described in

1 §162.365(e), or if it is not appropriate for us to defer to the actions  
2 or proceedings, we will follow the procedures in paragraphs (b), (c),  
3 and (d) of this section and, as applicable, ensure consistency with  
4 25 U.S.C. 4137.

5 (b) If we determine there has been a violation of the conditions of a  
6 residential lease other than a violation of payment provisions  
7 covered by paragraph (c) of this section, we will promptly send the  
8 lessee and any mortgagee a notice of violation by certified mail,  
9 return receipt requested.

10 (1) We will send a copy of the notice of violation to the tribe for  
11 tribal land, or provide constructive notice to Indian landowners for  
12 individually owned Indian land.

13 (2) The notice of violation will advise the lessee that, within 10  
14 business days of the receipt of a notice of violation, the lessee must:

15 (i) Cure the violation and notify us, and the tribe for tribal land, in  
16 writing that the violation has been cured;

17 (ii) Dispute our determination that a violation has occurred; or

18 (iii) Request additional time to cure the violation.

19 (3) The notice of violation may order the lessee to cease operations  
20 under the lease.

21 (c) A lessee's failure to pay rent in the time and manner required by  
22 a residential lease is a violation of the lease, and we will issue a  
23 notice of violation in accordance with this paragraph.

24 (1) We will send the lessee and any mortgagee a notice of violation  
25 by certified mail, return receipt requested:

26 (i) Promptly following the date on which the payment was due, if  
27 the lease requires that rental payments be made to us; or

28 (ii) Promptly following the date on which we receive actual notice  
of non-payment from the Indian landowners, if the lease provides  
for payment directly to the Indian landowners.

(2) We will send a copy of the notice of violation to the tribe for  
tribal land, or provide constructive notice to Indian landowners for  
individually owned Indian land.

(3) The notice of violation will require the lessee to provide  
adequate proof of payment.

71. Plaintiff further alleges that 25 CFR § 165.366 requires the BIA to  
transmit to "the lessee and any mortgagee a notice of violation by certified mail,

1 return receipt requested” in the event of a lease violation, and provide an  
2 opportunity to cure, has been effective since January 4, 2013.

3 72. Despite its regulatory obligation to do so, the BIA did not properly  
4 provide prompt notice of violation to Deutsche Bank. Instead of a prompt notice to  
5 Deutsche Bank, notice was sent to a defunct entity, WAMU, despite the Corporate  
6 Assignment being recorded at the time. Thereafter, Plaintiff alleges that notice  
7 was not provided to the address designated on the Corporate Assignment to contact  
8 regarding the Subject Deed of Trust, which was the servicer’s designated address.

9 73. Plaintiff alleges that in addition to the notice requirements pursuant to  
10 statute and the Lease which the BIA and Lessors’ failed to comply with, under the  
11 Administrative Procedure Act Section 5(b), 5 U.S.C. § 554(b), persons entitled to  
12 notice of an administrative hearing must be informed of the matters of facts and  
13 law asserted to afford due process. Where, as here, the party proceeded against was  
14 not given an opportunity to defend itself, an adverse finding by the agency violates  
15 due process under the Administrative Procedure Act Section 5(b), 5 U.S.C.  
16 § 554(b).

17 74. Plaintiff alleges that it was not properly notified of the BIA’s intention  
18 to terminate the Lease Agreement, despite the Lease Agreement terms and BIA’s  
19 regulations requiring notice. The BIA’s failure to provide notice to Deutsche Bank  
20 and failure to follow its own regulations was “arbitrary and capricious, an abuse of  
21 discretion, or otherwise not in accordance with law” under 5 U.S.C.A. § 706(2)(A).  
22 Thus, Plaintiff alleges that Deutsche Bank is entitled to judgment in its favor that  
23 the BIA’s decision to terminate the Lease Agreement was unlawful, setting aside  
24 the termination of the Lease, and requiring the BIA and Lessors to approve the  
25 Subject Deed of Trust in all respects. 5 U.S.C.A. § 706.

26 **E. Deutsche Bank Tendered the Claim to Commonwealth**

27 75. Because the BIA asserted that the Subject Deed of Trust, the  
28 underlying Assignment to Whalen, and the Assignment of the Subject Deed of

1 Trust to Deutsche Bank were not authorized and invalid as against the interests of  
2 the Lessors with respect to the Subject Property, Deutsche Bank tendered a claim  
3 under the Policy to Commonwealth.

4 76. On or about July 18, 2016, Commonwealth denied the claim on the  
5 grounds that it was allegedly prejudiced because the Lease had been cancelled  
6 before Deutsche Bank tendered the claim.

7 77. Plaintiff alleges that as grounds for the denial, Commonwealth used  
8 letters from the BIA to Bowhay and Whalen. Those letters date back to March 17,  
9 2015; however, one of the letters was sent to WAMU, which is no longer a viable  
10 entity, after the Assignment to Deutsche bank was recorded and the second was not  
11 sent to the designated address for Deutsche Bank that was identified as the address  
12 to use to contact Deutsche Bank regarding the Subject Deed of Trust on the  
13 Assignment. Thus, Plaintiff further alleges that these letters as addressed do not  
14 constitute sufficient notice to trigger Plaintiff's knowledge and determination that a  
15 title claim was appropriate.

16 78. Plaintiff further alleges that Commonwealth already knew of the title  
17 issue and failed to correct it despite taking efforts to do so in 2007 after the loan  
18 closed. As a result, Plaintiff did not have any obligation to notify Commonwealth  
19 of facts that it already knew about the title issue and should have, but failed to  
20 correct it after undertaking the obligation to do so. Thus the denial on the grounds  
21 of late notice breaches the coverage obligations under the policy since not only was  
22 there no duty to notify Commonwealth of information it already knew, but there  
23 was no actual prejudice since Commonwealth was prejudiced, if at all, by its own  
24 failure to obtain the BIA separate approval for the Subject Deed of Trust that it  
25 advised the owner of the indebtedness that it was doing almost ten years ago.

26 79. Plaintiff further alleges that Commonwealth prematurely denied the  
27 claim without proper investigation. Plaintiff alleges upon information and belief  
28 that the basis for this denial violates Commonwealth's duty under the policy to

1 investigate the basis for coverage in this matter and that its reasoning was  
2 insufficient to deny the claim based on claimed actual notice that prejudiced  
3 Commonwealth.

4 80. Plaintiff further alleges, upon information and belief, that while the  
5 short sale was proceeding, Chicago Title Insurance Company, an entity jointly  
6 operated by Fidelity National Title Insurance Company (“Fidelity”) with  
7 Commonwealth, was utilized to provide vesting and title information, obtain the  
8 preliminary title report, and to insure the proposed short sale. Given that this was a  
9 an Indian leasehold estate subject to specific federal regulation and procedures  
10 under the BIA, the method for ensuring that title to the Subject Property was  
11 properly transferred was much more significant and complex causing Deutsche  
12 Bank to rely more naturally on its title insurance vender who was directing how the  
13 deed should vest and how to otherwise properly transfer title to the Subject  
14 Property to Deutsche Bank in lieu of foreclosure to allow for recovery of the  
15 security interest in the Subject Property (the Subject Deed of Trust— the  
16 document at the heart of this matter that lacked the original separate BIA  
17 authorization).

18 81. Plaintiff further alleges, upon information and belief, that Chicago  
19 Title mishandled the vesting requests and other title services it provided causing  
20 significant delays in the short sale such that the proposed buyer decided not to  
21 purchase the Subject Property at least six months before the Lease was cancelled.

22 82. Plaintiff further alleges, upon information and belief, that Chicago  
23 title also delayed the deed in lieu transaction after the proposed buyer discontinued  
24 the short sale transaction which was instrumental in causing and defeating  
25 Deutsche Bank’s prompt ownership of the Subject Property and thus thwarted its  
26 normal course of action which is its most pivotal opportunity to determine and cure  
27 the borrowers’ default under the lease thereby preventing it from being cancelled  
28 and from actually discovering the lack of authorization and remedying it before the

1 cancellation.

2 83. Plaintiff also alleges that Chicago Title identified the BIA approval  
3 requirements in the preliminary title report, but failed to advise Deutsche Bank that  
4 its Subject Deed of Trust did not appear to comply with them. Since Deutsche  
5 Bank was relying on Chicago Title to instruct the parties in both the short sale and  
6 the deed in lieu attempted transactions, Plaintiff alleges that Chicago Title is  
7 responsible for the Lease cancellation and any prejudice if any to Commonwealth.  
8 Plaintiff also alleges that Chicago Title had actual knowledge or should have  
9 determined that the Subject Deed of Trust required the separate BIA approval form  
10 to the extent it is required, since it undertook to advise the parties in the short sale  
11 and deed and lieu transactions as to title. Plaintiff also alleges upon information  
12 and belief that since Commonwealth and Chicago Title are both owned and  
13 operated by Fidelity, they are agents, servants, and/or alter-egos of the other such  
14 that Chicago's Notice, Failure to Notify Deutsche Bank of the issue, and delay  
15 causing the cancellation, should be imputed to Commonwealth for all claims  
16 herein.

17 **F. Commonwealth Knew the Subject Deed of Trust Lacked Separate**  
18 **BIA Approval since April 2007**

19 84. Plaintiff further alleges that Commonwealth sent a letter to WAMU,  
20 dated April 6, 2007, acknowledging and advising WAMU that the Subject Deed of  
21 Trust lacked the separate BIA approval. Commonwealth also undertook the  
22 responsibility and selected the option under the policy to obtain the BIA's  
23 approval.

24 85. However, despite Commonwealth unilaterally undertaking the  
25 obligation to perfect the Subject Deed of Trust as to the BIA and the Lessors,  
26 under the policy, Plaintiff alleges that Commonwealth failed to complete its task  
27 and knowingly, willingly, recklessly and without regard for the rights of the lien  
28 holder, breached its obligations under the policy and left the Subject Deed of Trust



1 without the separate BIA authorization.

2 86. Accordingly, Plaintiff alleges that Commonwealth had notice of the  
3 lack of separate BIA authorization for the Subject Deed of Trust for almost ten  
4 years before the Lease was cancelled, it undertook to resolve the lack of separate  
5 BIA authorization and failed, it represented it was handling the matter causing  
6 detrimental reliance and likely prevented other resolution to correct the lack of  
7 approval by the BIA with respect to the Subject Deed of Trust, and most recently,  
8 Commonwealth denied the title claim on the basis that Plaintiff had somehow  
9 caused it prejudice in violation of its duties under the title insurance policy to  
10 provide coverage in accordance with the reasonable expectations of the insured, to  
11 diligently investigate the basis for the claim, and to give the insureds interests  
12 equal weight as its own; Plaintiff alleges that Commonwealth is liable for the full  
13 extent of the coverage under the policy, in addition to compensatory, punitive, and  
14 other damages that will be determined at the time of trial. Plaintiff further alleges  
15 that since Commonwealth had actual knowledge of this issue and failed to correct  
16 it for approximately ten years, and participated in other wrongful conduct, Plaintiff  
17 could not have actually prejudiced Commonwealth. Rather, it was  
18 Commonwealth's own negligence that prejudiced itself, to the extent that it is  
19 prejudiced.

20  
21 **FIRST CAUSE OF ACTION**

22 **(Declaratory Judgment Regarding Validity of the Subject Deed of Trust)**

23 **(All Defendants and DOES 1-50 Except Commonwealth)**

24 87. Deutsche Bank hereby incorporates each and every allegation asserted  
25 above, and re-alleges them as though fully set forth herein.

26 88. An actual controversy has arisen and now exists between Deutsche  
27 Bank, the BIA, Lessors, and DOES 1-50, as to the validity of the Subject Deed of  
28 Trust.

1           89. Bowhay and Whalen executed the Subject Note and Subject Deed of  
2 Trust, listing WAMU as the lender. The Subject Deed of Trust was recorded in the  
3 Official Records of the Riverside County Recorder's Office as Instrument Number  
4 2006-0859790 on November 21, 2006.

5           90. Although the Subject Deed of Trust was not recorded with any  
6 additional "Consent to Assignment" signed by the BIA, it is valid. No additional  
7 consent to assignment was necessary because the Consent to Assignment attached  
8 to Bowhay's Assignment "constitute[s] Consent to all Assignments of Subleases  
9 which Consent is required by Article 16 of PSL-246." The language of the consent  
10 expressly authorized future, current, and past assignments and encumbrances.

11           91. Plaintiff alleges that the Subject Deed of Trust is valid and no  
12 provision of the Lease Agreement can invalidate the Subject Deed of Trust. Under  
13 California Law, the Subject Deed of Trust validly imposes a lien on the leasehold  
14 estate even if the lease purports to limit the lessee's right to assign or encumber the  
15 lease.

16           92. Plaintiff alleges that pursuant to 25 CFR § 162.357(a), the Subject  
17 Deed of Trust is neither void nor voidable, and is therefore valid.

18           93. Plaintiff alleges that according to prior 25 CFR§ 162.12(a) did "not  
19 state that [subleases, assignments, or encumbrances] which did not receive BIA  
20 approval [were] void or voidable. Instead the remedy for a violation of § 162.12(a)  
21 is found in 25 CFR § 162.14, which" provides for written notice and opportunity to  
22 cure.

23           94. Plaintiff alleges that neither of the superseding regulations declares  
24 that a sublease, assignment, or encumbrance that does not receive BIA approval is  
25 void or voidable. *Compare* 25 CFR § 162.12(a) *with* 25 CFR § 162.610(a) *and* 25  
26 CFR § 162.357(a). Instead, pursuant to 25 CFR § 162.366, notice and an  
27 opportunity to cure in the event of an unapproved sublease, assignment, or  
28 encumbrance is required. Plaintiff alleges that BIA and the Lessors failed to

1 provide sufficient and proper notice or an opportunity to cure the cancellation and  
2 lack of separate BIA authorization. Based on the BIA and the Lessors' failure to  
3 comply with the terms of the Lease and the CFR, the cancellation of the Lease is  
4 void and the Subject Deed of Trust fully valid and enforceable in all respects.

5 95. Plaintiff alleges that the Subject Deed of Trust is also enforceable  
6 against any after acquired interest in the Subject Property pursuant to Cal. Civ.  
7 Code § 2897 since it was properly recorded in the title to the Subject Property.

8 96. Plaintiff further alleges that it is entitled to declaratory relief pursuant  
9 to Cal. Civ. Code § 1214 because the Subject Deed of Trust takes priority over any  
10 and all subsequently created liens since it was dully recorded providing notice to  
11 third parties and was obtained in exchange for valuable consideration.

12 97. Because the Subject Deed of Trust was recorded, it is valid and  
13 enforceable against all after acquired interests under California law.

14 98. Deutsche Bank is an encumbrancer of the Subject Property because it  
15 is an assignee of the Subject Deed of Trust.

16 99. The Subject Loan, including the Subject Note, the Subject Deed of  
17 Trust, and all of its accompanying rights and documentation, was sold, assigned,  
18 and conveyed by WAMU, and by virtue of the Pooling and Servicing Agreement  
19 dated January 1, 2007, transferred to Deutsche Bank National Trust Company with  
20 respect to the "WaMu Asset-Backed Certificates WaMu Series 2007-HE1 Trust"  
21 between WAMU Asset Acceptance Corp. as Depositor, and Deutsche Bank  
22 National Trust Company Delaware, as Trustee, on or about January 1, 2007.

23 100. On or about April 9, 2012, JP Morgan Chase Bank, National  
24 Association successor in interest by purchase from the FDIC as receiver of  
25 Washington Mutual Bank executed a Corporate Assignment of Deed of Trust,  
26 evidencing and recording the assignment of the Subject Deed of Trust to Deutsche  
27 Bank to place third parties on notice of the assignment. The Corporate Assignment  
28 of Deed of Trust was recorded in the Riverside County Recorder's Office as

1 Instrument Number 2006-0859790 on May 7, 2012.

2 101. As an encumbrancer, Deutsche Bank has substantive rights to receive  
3 notice and opportunity to cure, both under the Lease Agreement and under  
4 applicable federal regulations. Deutsche Bank also has substantive rights under the  
5 Subject Deed of Trust as the owner of the Subject Loan, including but not limited  
6 to, the right to conduct a non-judicial foreclosure sale and the right to insurance  
7 proceeds under the title insurance policy issued by Commonwealth.

8 102. Plaintiff alleges, upon information and belief, that the BIA and  
9 Lessors cancelled the Lease Agreement without giving Deutsche Bank proper and  
10 sufficient notice and opportunity to cure. Plaintiff also alleges upon information  
11 and belief that neither the BIA nor Lessors gave Deutsche Bank forty-five days'  
12 proper and sufficient notice of any intention to terminate the Lease Agreement, an  
13 opportunity to cure any default that can be cured by payment or expenditure of  
14 money, and an opportunity to initiate and complete foreclosure for any default that  
15 cannot be cured by payment or expenditure of money.

16 103. Likewise, Plaintiff alleges upon information and belief, that the BIA  
17 cancelled the Lease Agreement without giving Deutsche Bank proper and  
18 sufficient notice and opportunity to cure as required under 25 CFR § 165.366.  
19 Plaintiff alleges upon information and belief that BIA's failure to provide proper  
20 and sufficient notice and an opportunity to cure renders the BIA's decision to  
21 terminate the Lease Agreement arbitrary and capricious, and an abuse of discretion  
22 under 5 U.S.C.A. § 706(2)(A).

23 104. Plaintiff alleges that there is a judicable controversy that is ripe for  
24 judicial determination since the BIA, the Lessors, and DOES 1-50 assert that the  
25 Subject Deed of Trust is invalid and unenforceable in direct contravention to  
26 Plaintiff's rights. Plaintiff alleges that the BIA and Lessors also assert that the  
27 Lease Agreement has been cancelled and/or refuse to allow Plaintiff to cure any  
28 default and obtain authorization, despite failure to follow proper termination

1 procedures under both the Lease Agreement and applicable regulations.

2 105. The BIA and Lessors also assert that Bowhay's interspousal transfer  
3 deed and grant deed to Whalen is invalid.

4 106. Based on these significant controversies, a judicial determination of  
5 the validity and enforceability of the Subject Deed of Trust is necessary and  
6 appropriate at this time to protect Deutsche Bank's rights and interests.

7 **SECOND CAUSE OF ACTION**

8 **(Breach of Lease Agreement)**

9 **(All Defendants and DOES 1-50 Except Commonwealth)**

10 107. Deutsche Bank hereby incorporates each and every allegation asserted  
11 in Paragraphs 1-106 above, and re-alleges them as though fully set forth herein.

12 108. Plaintiff alleges that it is an encumbrancer of the Subject Property  
13 who may enforce the Lease pursuant to California Civil Code Section 1559 since  
14 the Lease provides expressly for the benefit of encumbrancers. The Lessors and  
15 the borrowers as assignees, understood that an encumbrancer would benefit from  
16 the Lease and the provisions as set forth below and in the CFR's requiring notice to  
17 lien holders demonstrate this understanding.

18 109. The Lease Agreement signed on June 3, 1981 and recorded in the  
19 Official Records of the Riverside County Recorder's Office as Instrument Number  
20 81-110352, is a contract for lease of the Subject Property. The offer to lease the  
21 property was accepted by the borrowers as assignees in exchange for valuable  
22 consideration, including rental fees.

23 110. The Lease Agreement expressly provides for forty-five days' notice to  
24 any and all encumbrancers of any intention to terminate, an opportunity to cure any  
25 default that can be cured by payment or expenditure of money, and an opportunity  
26 to initiate and complete foreclosure for any default that cannot be cured by  
27 payment or expenditure of money. (Lease § 18, pp. 14-15).

28 111. Deutsche Bank is an encumbrancer of the Subject Property because it

1 is an assignee of the Subject Deed of Trust. Therefore, Deutsche Bank is a third-  
2 party beneficiary of the Lease Agreement.

3 112. Section 18 of the Lease Agreement was written expressly to protect  
4 the interests and rights of encumbrancers like Deutsche Bank in return for  
5 furthering the Lessors' interest of ensuring payment under, and compliance with,  
6 the Lease Agreement. The Notice and Cure provisions apply to encumbrancers  
7 who are not approved by the BIA as set forth in Paragraphs 54-69 above which are  
8 incorporated herein again by specific reference.

9 113. The BIA, Lessors, and DOES 1-50 breached the Lease Agreement by  
10 failing to give Deutsche Bank proper and sufficient forty-five days' notice required  
11 to terminate the Lease Agreement, an opportunity to cure any default that can be  
12 cured by payment or expenditure of money, and an opportunity to initiate and  
13 complete foreclosure for any default that cannot be cured by payment or  
14 expenditure of money.

15 114. Instead, Deutsche Bank obtained the BIA's January 7, 2016 letter  
16 indirectly through loss mitigation efforts with multiple parties, including Chicago  
17 Title, that obfuscated the issue, although Plaintiff was relying on Chicago Title to  
18 provide accurate and complete information as to vesting and title matters to protect  
19 its security interest in the Subject Deed of Trust extensively prior to the Lease  
20 cancellation.

21 115. Had either the Secretary, acting through the BIA, the Lessors, or  
22 DOES 1-50, given Deutsche Bank proper and sufficient notice as specified in  
23 section 18 of the Lease Agreement, Deutsche Bank would have been able to either  
24 cure any default that could be cured by payment or expenditure of money or  
25 initiated and completed a foreclosure for any default that could not be cured by  
26 payment or expenditure of money.

27 116. As a result of the BIA, the Lessors' and DOES 1-50's failure to give  
28 proper and sufficient notice of Lessors' intent to terminate the Lease Agreement to



1 Deutsche Bank and the resulting position of the BIA and Lessors that the Subject  
2 Deed of Trust is not valid and enforceable following the cancellation, while  
3 preserving all rights and objecting to the BIA's Lessors' and DOES 1-50's claims  
4 of the invalidity and unenforceability of the Subject Deed of Trust, to the extent of  
5 the loss of its security interest, Deutsche Bank has been damaged in the amount to  
6 be proven at trial, but not less than all amounts due and owing under the  
7 indebtedness estimated at \$350,000.00. Additionally, Plaintiff is damaged by the  
8 breach of contract since it lost its right to cure or initiate and complete foreclosure  
9 as contemplated by section 18 of the Lease Agreement. Plaintiff alleges that it is  
10 further damaged since there is a cloud on its title to its security interest due to the  
11 wrongful cancellation which caused it to incur damages in an amount estimated at  
12 \$350,000.00 but not less than the total amounts due and owing under the Subject  
13 Loan.

### 14 **THIRD CAUSE OF ACTION**

#### 15 **(Constructive Trust)**

#### 16 **(All Defendants and DOES 1-50 Except Commonwealth)**

17 117. Deutsche Bank hereby incorporates each and every allegation asserted  
18 in Paragraphs 1-116, and re-alleges them as though fully set forth herein.

19 118. Plaintiff is entitled to a Constructive Trust pursuant to California Civil  
20 Code Section 2223 because the BIA, Lessors, and DOES 1-50, wrongfully  
21 cancelled the Lease Agreement in violation of the Administrative Procedures Act  
22 and without giving proper and sufficient notice in violation of the CFR regulations  
23 set forth above and the Lease Agreement terms.

24 119. The Subject Property is the res.

25 120. As an encumbrancer of the Subject Property, Deutsche Bank has a  
26 vested interest in the Subject Property, including the right to conduct a non-judicial  
27 foreclosure sale under the Subject Deed of Trust.

28 121. Plaintiff alleges that to the extent that the BIA, the Lessors, and DOES

1 1-50, have wrongfully obtained the Subject Property without encumbrance by  
2 Plaintiff's Subject Deed of Trust: which Plaintiff refutes, denies, objects to and  
3 hereby preserves all rights to oppose to the fullest extent under the law; the BIA,  
4 the Lessors, DOES 1-50 and/or any other person or entity that claims seniority to  
5 Plaintiff's security interest, Plaintiff is entitled to a constructive trust over the  
6 Subject Property, including all proceeds any person derived from the Subject  
7 Property, so that it may proceed with foreclosure and liquidate its security interest  
8 as provided by the Subject Deed of Trust.

9 122. The Lease Agreement expressly provides for forty-five days' notice of  
10 any intention to terminate the Lease Agreement, an opportunity to cure any default  
11 that can be cured by payment or expenditure of money, and an opportunity to  
12 initiate and complete foreclosure for any default that cannot be cured by payment  
13 or expenditure of money as required by the Lease Agreement. Likewise, the  
14 federal regulations identified above require notice and an opportunity to be heard  
15 before an agency renders an adverse finding regarding property interests. The  
16 BIA's, and DOES 1-50's failure to provide notice to Deutsche Bank and failure to  
17 follow its own regulations was "arbitrary and capricious, an abuse of discretion, or  
18 otherwise not in accordance with law" under 5 U.S.C.A. § 706(2)(A) and Deutsche  
19 Bank is entitled to judgment that the BIA's, the Lessors', and/or DOES 1-50's  
20 cancellation of the Lease Agreement was unlawful and judgment setting aside the  
21 cancellation.

22 123. As a result of the final decision to cancel the Lease Agreement,  
23 Deutsche Bank, while preserving all objections and arguments to the contrary, and  
24 to the extent that this is the case, lost its substantive rights in the Subject Property  
25 including the right to conduct a non-judicial foreclosure sale of the Subject  
26 Property under the Subject Deed of Trust causing significant damages in an  
27 amount estimated at \$350,000 to be determined at trial. Plaintiff is entitled to a  
28 constructive trust as to the Subject Property, including, but not limited to any

1 proceeds obtained by the BIA, Lessors, and/or DOES 1-50, up to the total amount  
2 of the indebtedness secured by its Subject Deed of Trust.

3 **FOURTH CAUSE OF ACTION**

4 **(Declaratory Judgment Regarding the Lease Agreement)**

5 **(All Defendants and DOES 1-50 Except Commonwealth)**

6 124. Deutsche Bank hereby incorporates each and every allegation asserted  
7 in Paragraphs 1-124 above, and re-alleges them as though fully set forth herein.

8 125. An actual controversy has arisen and now exists between Deutsche  
9 Bank, the BIA, Lessors, and DOES 1-50, as to their respective rights and duties  
10 under the Lease Agreement and the validity of the cancellation of the Lease  
11 Agreement.

12 126. The Lease Agreement signed on June 3, 1981 and recorded in the  
13 Official Records of the Riverside County Recorder's Office as Instrument Number  
14 81-110352, is a contract for lease of the Subject Property.

15 127. The Lease Agreement expressly provides for forty-five days' notice to  
16 any and all encumbrancers of any intention to terminate the Lease Agreement, an  
17 opportunity to cure any default that can be cured by payment or expenditure of  
18 money, and an opportunity to initiate and complete foreclosure for any default that  
19 cannot be cured by payment or expenditure of money. (Lease § 18, pp. 14–15).

20 128. Deutsche Bank is an encumbrancer of the Subject Property because it  
21 is an assignee of the Subject Deed of Trust. Therefore, Deutsche Bank is a third-  
22 party beneficiary of the Lease Agreement.

23 129. Section 18 of the Lease Agreement, was written expressly to protect  
24 the interests and rights of encumbrancers like Deutsche Bank in return for  
25 furthering the Lessors' interest of ensuring payment under and compliance with the  
26 Lease Agreement.

27 130. The BIA and Lessors decided to terminate the Lease Agreement  
28 without giving Deutsche Bank proper and sufficient forty-five days' notice of any

1 intention to terminate the Lease Agreement, an opportunity to cure any default that  
2 can be cured by payment or expenditure of money, and an opportunity to initiate  
3 and complete foreclosure for any default that cannot be cured by payment or  
4 expenditure of money.

5 131. A justiciable controversy exists because the BIA, Lessors, and DOES  
6 1-50 assert that the Lease Agreement has been cancelled, despite failure to follow  
7 proper cancellation procedures, including proper and sufficient notice to Deutsche  
8 Bank and opportunity to cure or initiate and complete foreclosure.

9 132. Based on the foregoing, a judicial determination that the manner in  
10 which the BIA, Lessors' and DOES 1-50 Cancelled the Lease Agreement violated  
11 its terms and is thus ineffective such that the Lease Agreement is fully valid,  
12 enforceable, and ongoing, is necessary and appropriate at this time to adjudicate  
13 the parties rights, and to protect Deutsche Bank's rights and interests under the  
14 Lease Agreement as they impact its Subject Deed of Trust.

15 **FIFTH CAUSE OF ACTION**

16 **(Declaratory Judgment Regarding 25 CFR § 165.366)**

17 **(The BIA and DOES 1-50)**

18 133. Deutsche Bank hereby incorporates each and every allegation asserted  
19 in Paragraphs 1-132 above, and re-alleges them as though fully set forth herein.

20 134. An actual controversy has arisen and now exists between Deutsche  
21 Bank, the BIA, and DOES 1-50, as to their respective rights and duties 25 CFR  
22 § 165.366 and the validity of the termination of the Lease Agreement.

23 135. The Lease Agreement signed on June 3, 1981 and recorded in the  
24 Official Records of the Riverside County Recorder's Office as Instrument Number  
25 81-110352, is a contract for lease of the Subject Property based upon an offer to  
26 lease, acceptance, and valuable consideration.

27 136. Pursuant to 25 CFR § 162.366, the BIA will transmit to "the lessee  
28 and any mortgagee a notice of violation by certified mail, return receipt requested."

Specifically, 25 CFR § 162.366 states:

(a) In the absence of actions or proceedings described in §162.365(e), or if it is not appropriate for us to defer to the actions or proceedings, we will follow the procedures in paragraphs (b), (c), and (d) of this section and, as applicable, ensure consistency with 25 U.S.C. § 4137.

(b) If we determine there has been a violation of the conditions of a residential lease other than a violation of payment provisions covered by paragraph (c) of this section, we will promptly send the lessee and any mortgagee a notice of violation by certified mail, return receipt requested.

(1) We will send a copy of the notice of violation to the tribe for tribal land, or provide constructive notice to Indian landowners for individually owned Indian land.

(2) The notice of violation will advise the lessee that, within 10 business days of the receipt of a notice of violation, the lessee must:

(i) Cure the violation and notify us, and the tribe for tribal land, in writing that the violation has been cured;

(ii) Dispute our determination that a violation has occurred; or

(iii) Request additional time to cure the violation.

(3) The notice of violation may order the lessee to cease operations under the lease.

(c) A lessee's failure to pay rent in the time and manner required by a residential lease is a violation of the lease, and we will issue a notice of violation in accordance with this paragraph.

(1) We will send the lessee and any mortgagee a notice of violation by certified mail, return receipt requested:

(i) Promptly following the date on which the payment was due, if the lease requires that rental payments be made to us; or

(ii) Promptly following the date on which we receive actual notice of non-payment from the Indian landowners, if the lease provides for payment directly to the Indian landowners....

137. Regulation 25 CFR § 165.366 requiring the BIA to transmit to "the lessee and any mortgagee a notice of violation by certified mail, return receipt requested" in the event of a lease violation, and provide an opportunity to cure, has been effective since January 4, 2013.

138. As an assignee of the Subject Deed of Trust, Deutsche Bank is an

1 encumbrancer of the Subject Property. Therefore, under 25 CFR § 165.366,  
2 Deutsche Bank was entitled to notice of any violation by certified mail, return  
3 receipt requested, and an opportunity to cure any violation of the Lease  
4 Agreement.

5 139. Despite its regulatory obligation to do so, the BIA did not provide  
6 proper and sufficient notice of any violation to Deutsche Bank. Instead of a prompt  
7 notice, it first sent a letter to defunct WAMU after the Assignment to Deutsche  
8 Bank was recorded as a matter of public record and later appears to have sent a  
9 letter to an address other than the address designated on the Assignment to contact  
10 for matters relating to the Subject Deed of Trust.

11 140. As a result, the BIA decided to terminate the Lease Agreement  
12 without giving Deutsche Bank sufficient and proper notice or opportunity to cure  
13 as required by 25 CFR § 165.366 and the Administrative Procedures Act.

14 141. A justiciable controversy exists since the BIA, the Lessors' and/or  
15 DOES 1-50, cancelled the Lease Agreement, despite failure to follow proper  
16 termination procedures, including providing sufficient and proper notice to  
17 Deutsche Bank and an opportunity to cure or initiate and complete foreclosure.

18 142. A judicial determination as to the invalidity of the cancellation of the  
19 Lease Agreement under Regulation 25 CFR § 165.366 and the Administrative  
20 Procedures Act set forth above is necessary and appropriate to adjudicate the  
21 parties rights and to protect Deutsche Bank's rights and interests.

## 22 **SIXTH CAUSE OF ACTION**

### 23 **(Breach of Insurance Contract)**

#### 24 **(Against Commonwealth and DOES 1–50)**

25 143. Deutsche Bank hereby incorporates each and every allegation asserted  
26 in Paragraphs 1-142 above, and re-alleges them as though fully set forth herein.

27 144. If the Court determines that either Bowhay's Grant to Whalen, the  
28 Subject Deed of Trust, or the Assignment of the Subject Deed of Trust, are invalid



1 or unenforceable to any extent due to the failure to obtain separate BIA approval,  
2 then the Court should also find that Commonwealth breached the Policy.

3 145. Plaintiff alleges upon information and belief that Commonwealth  
4 failed to prove coverage although it has actual knowledge of the lack of the BIA's  
5 separate authorization of the Subject Deed of Trust and undertook to redress this  
6 specific issue nearly ten years ago. Plaintiff alleges that Commonwealth failed to  
7 complete the task and now in an apparently bad faith maneuver to avoid the loss it  
8 literally incurred and caused, a loss that it actually insured Deutsche Bank against,  
9 it now seeks to refute any coverage under the title insurance policy claiming that it  
10 was actually prejudiced due to untimely notice. Further, Plaintiff alleges upon  
11 information and belief, that Commonwealth's wrongful failure to provide coverage  
12 breaches the title insurance policy against its insured, Deutsche Bank, the owner of  
13 the indebtedness because no notice of the lack of BIA Authorization was required  
14 when Commonwealth already knew of the issue and failed to correct it after  
15 representing it would do so, Deutsche Bank did not provide late notice of the issue  
16 since it was not provided with sufficient and proper notice itself to trigger any  
17 obligation, Commonwealth failed to adequately investigate the claim and made  
18 erroneous and/or incomplete assumptions of sufficient notice in making its  
19 coverage determination, and Plaintiff caused no actual prejudice to Commonwealth  
20 since its own failed endeavor to obtain separate approval from the BIA is the cause  
21 of the prejudice, rather than any notification by Plaintiff.

22 146. On or about November 17, 2006, Commonwealth issued the Policy to  
23 WAMU and subsequent owners of the indebtedness, now Deutsche Bank.

24 147. Plaintiff alleges that the Policy was issued to insure the title to the  
25 Subject Property and the validity and enforceability of Subject Deed of Trust.  
26 Specifically, the Policy insures against "[t]itle to the estate or Interest described in  
27 Schedule A being vested other than as stated herein;" "[u]nmarketability of the  
28 tile;" "[a]ny defect in or lien or encumbrance on the title;" "[t]he invalidity or

1 unenforceability of the lien of the insured mortgage upon the title;” and “[t]he  
2 invalidity or unenforceability of any assignment of the insured mortgage. . .”

3 148. Plaintiff alleges that Deutsche Bank is an “insured” within the  
4 meaning of the Policy. Under Section 1, titled “Definition of Terms” subsection  
5 (a)(i), the Policy defines “insured” to mean “the owner of the indebtedness secured  
6 by the insured mortgage and each successor in ownership of the indebtedness. . .”

7 149. Plaintiff alleges that the Policy’s one-time premium was paid. This  
8 title insurance policy is a one-premium agreement to indemnify a policyholder, in  
9 amounts not exceeding the face amount of the policy, for losses caused by either  
10 on-record and/or off-record defects that are found in the title or interest in an  
11 insured property to have existed on the date on which the policy is issued. This title  
12 insurance policy, like most, was paid for with only one premium at the time that  
13 the loan was originated and there are no continuation premiums.

14 150. Plaintiff alleges that Deutsche Bank has performed its obligations  
15 under the terms of the Policy, including payment and that Deutsche Bank timely  
16 tendered its claim for coverage. Plaintiff further alleges that Commonwealth had  
17 actual notice of the failure to obtain separate BIA approval for the Subject Deed of  
18 Trust and failed to correct it in nearly ten years despite undertaking the  
19 responsibility to do so under the Policy.

20 151. On or about January 7, 2016, the BIA sent a letter to Bowhay  
21 regarding the final decision to terminate the Lease Agreement for the Subject  
22 Property. The BIA’s January 7, 2016 letter asserted that the Subject Deed of Trust,  
23 the Grant Deed to Whalen, and the Corporate Assignment of Deed of Trust to  
24 Deutsche Bank were not approved by the BIA. (See Ex. G). The BIA’s January 7,  
25 2016 letter was sent to an address other than one designated on the Assignment to  
26 contact for matters relating to the Subject Deed of Trust.

27 152. According to the BIA, without BIA approval, the Subject Deed of  
28 Trust is invalid and unenforceable. Thus, this falls within the Policy’s coverage for

1 “[t]he invalidity or unenforceability of the lien of the insured mortgage upon the  
2 title.”

3 153. According to the BIA, without BIA approval, the Grant Deed to  
4 Whalen was void. Thus, this falls within the Policy’s coverage for a “defect... in  
5 title” under the Policy, “[t]itle to the estate or Interest described in Schedule A”  
6 being “vested other than as stated” in the Policy, coverage where title to the  
7 Subject Property was “[u]nmarketable,” and for “[t]he invalidity or  
8 unenforceability of the lien of the insured mortgage upon the title.”

9 154. According to the BIA, without BIA approval, the Corporate  
10 Assignment of the Deed of Trust was invalid and unenforceable. Thus, this falls  
11 within the Policy’s coverage for “[t]he invalidity or unenforceability of any  
12 assignment of the insured mortgage....”

13 155. Although Deutsche Bank tendered a claim to Commonwealth and/or  
14 DOES 1-50 under the Policy, Commonwealth denied the claim, in breach of the  
15 Policy.

16 156. Commonwealth and DOES 1-50 may not ignore evidence which  
17 supports coverage. It did so and acted unreasonably towards its insured, Deutsche  
18 Bank. It already knew of the failure of separate authorization has alleged above,  
19 yet failed to complete its redress of the issue and then denied coverage under the  
20 pretense of actual prejudice. Further, Plaintiff alleges that while investigating the  
21 claim, Commonwealth had a duty to diligently search for evidence which supports  
22 it’s insured’s claim. However, it sought to discover only the evidence that it  
23 contended defeated the claim and thus held its own interest above that of the  
24 insured, Deutsche Bank. It failed to reveal that it had previously discovered and  
25 attempted to redress the exact issue that was the basis of Deutsche Bank’s claim,  
26 almost ten years before the lease was cancelled and then refused coverage to  
27 Deutsche Bank based upon incomplete and/or erroneous assumptions of notice  
28 prior to the cancellation without proper investigation and more significantly,

1 asserted an obligation of notice and alleged actual prejudice when no further was  
2 required since it already knew of the issue, and no actual prejudice was caused by  
3 Deutsche Bank since Commonwealth's own actions and failure to complete the  
4 correction of title it undertook was the cause of the title defect, not Deutsche  
5 Bank's notice. Commonwealth's failure to correct the BIA authorization after  
6 undertaking the responsibility, followed by its secretive denial of title insurance  
7 coverage for this same defect as defined in the Policy, breaches the Policy in bad  
8 faith. Thus, Commonwealth's denial was unreasonable and without proper cause.

9 157. As a result of Commonwealth's and DOES 1-50's breach of the  
10 Policy, and while objecting to the Defendants claims in their entirety as to the  
11 Subject Deed of Trust, Deutsche Bank alleges that it suffered damages of  
12 approximately \$350,000.00, in an amount to be proven at the time of trial.

### 13 **SEVENTH CAUSE OF ACTION**

#### 14 **(Declaratory Judgment Regarding Insurance Contract)**

#### 15 **(Against Commonwealth and DOES 1-50)**

16 158. Deutsche Bank hereby incorporates each and every allegation asserted  
17 in Paragraphs 1-157 above, and re-alleges them as though fully set forth herein.

18 159. If the Court determines that either Bowhay's Grant to Whalen, the  
19 Subject Deed of Trust, or the Assignment thereof, was invalid or unenforceable,  
20 then the Court should also grant declaratory judgment in Deutsche Bank's favor.

21 160. An actual controversy has arisen and now exists between Deutsche  
22 Bank, Commonwealth, and DOES 1-50, as to their respective rights and duties  
23 under the Policy.

24 161. On or about November 17, 2006, Commonwealth issued the Policy to  
25 insure the title to the Subject Property and the validity of Subject Deed of Trust.  
26 Specifically, the Policy insures against "[t]itle to the estate or Interest described in  
27 Schedule A being vested other than as stated herein;" "[u]nmarketability of the  
28 tile;" "[a]ny defect in or lien or encumbrance on the title;" "[t]he invalidity or

1 unenforceability of the lien of the insured mortgage upon the title;” and “[t]he  
2 invalidity or unenforceability of any assignment of the insured mortgage. . .”

3 162. Deutsche Bank is an “insured” within the meaning of the Policy.  
4 Under Section 1, titled “Definition of Terms” subsection (a)(i), the Policy defines  
5 “insured” to mean “the owner of the indebtedness secured by the insured mortgage  
6 and each successor in ownership of the indebtedness . . .”

7 163. Deutsche Bank has performed its obligations under the terms of the  
8 Policy.

9 164. According to the BIA, without BIA approval, the Subject Deed of  
10 Trust is invalid and unenforceable. This issue falls within the Policy’s coverage for  
11 “[t]he invalidity or unenforceability of the lien of the insured mortgage upon the  
12 title.”

13 165. According to the BIA, without BIA approval, the Grant Deed to  
14 Whalen was void. This issue falls within the Policy’s coverage for “[t]itle to the  
15 estate or Interest described in Schedule A” being “vested other than as stated” in  
16 the Policy.

17 166. According to the BIA, without BIA approval, the Grant Deed to  
18 Whalen was void. This issue falls within the Policy’s coverage for a “defect... in  
19 title,” title challenged as “[u]nmarketable,” and the Policy’s coverage for “[t]he  
20 invalidity or unenforceability of the lien of the insured mortgage upon the title.”

21 167. According to the BIA, without BIA approval, the Corporate  
22 Assignment of the Deed of Trust was invalid and unenforceable. This dispute falls  
23 within the Policy’s coverage for “[t]he invalidity or unenforceability of any  
24 assignment of the insured mortgage....”

25 168. Although Deutsche Bank tendered a claim to Commonwealth under  
26 the Policy, Commonwealth denied the claim, in breach of the Policy.

27 169. As a result of Commonwealth’s breach of the Policy, and while  
28 objecting, opposing, and reserving all rights to refute the Defendants actions,

1 claims, and legal contentions and/or legal effect, to the extent the court determines,  
2 if any, Deutsche Bank sustained damage to its interest and rights under the Subject  
3 Deed of Trust, including a cloud on title due to the cancellation and failure to  
4 obtain BIA approval, and the right to complete the non-judicial foreclosure  
5 process.

6 170. A justiciable controversy exists since if Commonwealth continues to  
7 deny Deutsche Bank's claim in breach of the Policy, Deutsche Bank will suffer  
8 damages from the cloud on its title of approximately \$350,000.00 in an amount to  
9 be determined at trial.

10 171. A judicial determination is necessary and appropriate at this time  
11 under the circumstances to adjudicate the parties rights and to protect Deutsche  
12 Bank's rights, and interests under the Policy and the Subject Deed of Trust.

### 13 14 **PRAYER FOR RELIEF**

15 WHEREFORE, Deutsche Bank prays for judgment against the Defendants  
16 as set forth below:

17 A. For a judicial determination that the Subject Deed of Trust is fully  
18 valid and enforceable;

19 B. For monetary damages against Lessors and DOES 1-50 as a result of  
20 Lessors' breach of the Lease Agreement;

21 C. For reinstatement of the Lease Agreement by BIA and Lessors;

22 D. For imposition of a constructive trust with respect to the Subject  
23 Property, including any proceeds, against Lessors and/or DOES 1-50;

24 E. For a judicial declaration that the Lease Agreement is not cancelled;

25 F. For a judicial declaration that any purported termination of the Lease  
26 Agreement is void without first giving proper and sufficient notice and opportunity  
27 to cure or foreclose to Deutsche Bank as specified by section 18 of the Lease  
28 Agreement and under 25 CFR § 162.366 and 5 U.S.C.A. § 706(2)(A);

1 G. For Specific Performance of Section 18 of the Lease Agreement by  
2 Lessors;

3 H. For monetary damages from Commonwealth as a result of  
4 Commonwealth's breach of its contractual obligations under the Policy;

5 I. For a judicial determination of Deutsche Bank and Commonwealth's  
6 respective rights and duties under the Policy;

7 J. For a judicial declaration that Commonwealth must indemnify  
8 Deutsche Bank, purchase the Subject Loan, or establish the validity of the Subject  
9 Deed of Trust under the Policy;

10 K. For reasonable attorneys' fees and costs of suit incurred herein; and

11 L. For such other relief as the Court may deem just and proper.  
12

13  
14 Dated: February 2, 2017

ALBERTSON LAW

15  
16  
17 By: 

GINA L. ALBERTSON

18 Attorneys for Plaintiff,  
19 **Deutsche Bank National Trust Company, as**  
20 **Trustee, in Trust for Registered Holders of**  
21 **WaMu Asset-Backed Certificates WaMu**  
22 **Series 2007-HE1 Trust**  
23  
24  
25  
26  
27  
28